Supreme Court, U.S.
FILED
JAN 14 1997
CLERK

(3)

No. 96-897

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

CHARLES BOOKER

Petitioner,

v.

JAMES WARD AND THOMAS KELLY,
WILLIAM OWENS AND TORRENCE LEWIS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

KENNETH N. FLAXMAN
CECILE L. SINGER
122 South Michigan Avenue
Suite 1850
Chicago, Illinois 60603

(312) 427-3200
Attorneys for Petitioner

4 pp

REPLY TO BRIEF IN OPPOSITION

1. Respondent agrees that the decision of the Seventh Circuit in this case is in conflict with decisions from the Second, Fifth, and Sixth Circuits. (Br. in Opp. 11.) The Court should resolve this conflict to restore the vitality of a private right of action as a mechanism for enforcing Fourth Amendment rights.

In the years following *Brown v. Illinois,* 422 U.S. 590 (1975), decisions of the Illinois courts suppressing evidence because the arresting officers had exploited illegal arrests to obtain inculpatory statements have failed to deter police officers from making unlawful arrests.[1] An effective damage

---

1. See, e.g., *People v. Stuckey,* 78 Ill.App.3d 1085, 398 N.E.2d 97 (1979) (1976 arrest); *People v. Sampson,* 86 Ill.App.3d 687, 408 N.E.2d 3 (1980) (1975 arrest); *People v. Sturdivant,* 99 Ill.App.3d 370, 425 N.E.2d 1046 (1981) (1978 arrest); *People v. Johnson,* 103 Ill.App.3d 734, 431 N.E.2d 1171 (1981), *aff'd* 94 Ill.2d 148, 445 N.E.2d 777 (1983) (1979 arrest); *People v. Lumpp,* 113 Ill.App.3d 694, 447 N.E.2d 963 (1983) (1978 arrest); *People v. Travis,* 122 Ill.App.3d 671, 462 N.E.2d 654 (1984) (1980 arrest); *People v. Thomas,* 123 Ill.App.3d 857, 463 N.E.2d 832 (1984) (1978 arrest); *People v. James,* 149 Ill.App.ed 214, 500 N.E.2d 474 (1986) (1983 arrest); *People v. Franklin,* 115 Ill.2d 328, 504 N.E.2d 80 (1987) (1982 arrest); *People v. McGhee,* 154 Ill.App.3d 232, 507 N.E.2d 33 (1987) (1984 arrest); *People v. McBride,* 157 Ill.App.3d 955, 510 N.E.2d 1087 (1987) 1984 arrest); *People v. White,* 117 Ill.2d 194, 512 N.E.2d. 677 (1987) (1982 arrest); *People v. Cole,* 168 Ill.App.3d 172, 522 N.E.2d 635 (1988) (1984 arrest); *People v. Berrios,* 178 Ill.App.3d 241, 533 N.E.2d 64 (1988) (1983 arrest); *People v. Stofer,* 180 Ill.App.3d 158, 534 N.E.2d 1287 (1989) (1985 arrest); *People v. Avery,* 180 Ill.App.3d 146, 534 N.E.2d 1296 (1989) (1985 arrest); *People v. Bates,* 192

remedy would add substantial vigor to the exclusionary rule as a tool to compel respect for the Fourth Amendment. But the damage remedy provided by 42 U.S.C. §1983 is eviscerated by the accrual rule fashioned by the Seventh Circuit, which bars the filing of a civil suit when more than two years have passed after an unlawful arrest, even when (as in each of the cases cited in note one above) more than two years pass before the criminal conviction based on the fruits of that unlawful arrest is reversed. Respondent agrees that, as interpreted by the Second, Fifth, and Sixth Circuits (Br. in Opp. 11), *Heck v. Humphrey*, 114 S.Ct. 2364 (1994) requires a different rule. Certiorari should be granted to resolve this conflict.

2. Respondent argues that state law, rather than the Federal Rules of Evidence, controls whether evidence of a state appellate court's determination that an arrest was not

---

Ill.App.3d 986, 549 N.E.2d 766 (1991), *opinion following remand* 267 Ill.App.3d 503, 642 N.E.2d 774 (1994) (1983 arrest, statement suppressed in 1994); *People v. Vega*, 203 Ill.App.3d 33, 560 N.E.2d 983 (1990) *opinion following remand* 250 Ill.App.3d 106, 620 N.E.2d 1189 (1993) (1986, arrest, suppression of confession affirmed in 1993); *People v. Halmon*, 225 Ill.App.3d 259, 587 N.E.2d 1182 (1992) (1983 arrest); *People v. Beamon*, 255 Ill.App.3d 63, 627 N.E.2d 316 (1993) (1986 arrest); *People v. Reynolds*, 257 Ill.App.3d 792, 629 N.E.2d 559 (1994) (1989 arrest); *People v. Turner*, 259 Ill.App.3d 979, 631 N.E.2d 1236 (1994) (1988 arrest); *People v. Wilson*, 260 Ill.App.3d 364, 632 N.E.2d 114 (1994) (1990 arerst); *People v. Barlow*, 273 Ill.App.3d 943, 654 N.E.2d 223 (1995) (1991 arrest); *People v. Sneed*, 274 Ill.App.3d 274, 653 N.E.2d 1340 (1995) (1991 arrest).

based on probable cause is admissible in a federal civil case. (Br. in Opp. 13.) The admissibility of evidence on a federal claim in federal court is, of course, controlled by federal law. A decision of a state appellate court is admissible as a report under Rule 803(8) of the Federal Rules of Evidence and should be enough evidence to overcome a police officer's motion for summary judgment.

CONCLUSION

The petition for writ of certiorari should be granted.

January, 1997

KENNETH N. FLAXMAN
CECILE L. SINGER
122 South Michigan Avenue
Suite 1850
Chicago, Illinois 60603
Attorneys for Petitioner